

# Conflicts of

Refresher for Boards & Commission Members

# Interest

**Austin Area HIV Planning Council**

June 22, 2013



**Local government depends on the service of community-minded individuals.**

**Along with public service comes additional responsibilities.**

**Board members are city officials.**

**As a city official, you become subject to laws that are designed to ensure the transparency and impartiality of government.**

# What we will cover today:

**Conflicts** DEFINED

**Conflict** RULES

**Recusal** PROCESS

**Federally-funded** PROJECTS

# Conflicts

DEFINED

# Feeling conflicted?

When your personal interests intrude on your ability to adhere to the highest standards in your decision making, or if it would appear so to an observer, you have a ...

conflict of interest.

Evaluation of whether a conflict exists requires

**close scrutiny** by the individual of

his/her relationships and financial affairs.

It is ultimately the **personal**  
**responsibility** of each board member to be  
aware of all relevant rules and to comply with them.

Conflicts can arise in a number of ways:

**Financial  
Relationship**

S

**Personal  
Relationships**

**Occupational  
Concerns**

Consider  
these:

**Could there be benefits (or consequences) for me that could cast doubt on my objectivity?**



**Do I have a close personal or financial relationship with an interested party?**



**Could this situation have an influence on any future opportunities for me?**



**How would I feel if my role appeared in the media?**



**Would I be happy if my personal connection to the issue became known to the public or my colleagues?**

# Conflict RULES

# Conflict rules:

may **prohibit**  
the action altogether  
(cannot be cured by  
recusal)

may require **recusal**  
(taking yourself out of the loop)

may leave the matter up to your  
**judgment**  
(the law cannot always codify  
common sense)

Situations that are totally prohibited –  
recusal cannot cure

# Total prohibition:

## A person who is

may not serve on a city board  
within **three years**  
of engaging in lobbying activity.

- ✓ registered as a lobbyist,
- ✓ required to register as a lobbyist, or
- ✓ an employee of a person required to register under the City's lobbying ordinance

# Total prohibition:

A city board member may not:

... formally appear before the board of which he/she is a member while acting as an advocate for himself/herself, or for any other person, group, or entity.

... accept paid campaign work relating to a ballot proposition if the board member participated in the board's discussion or vote regarding the proposition.

# Total prohibition:

A person may not be involved in the

and have a financial interest, direct or indirect, in the contract resulting from that solicitation.

- ✓ development,
- ✓ evaluation, or
- ✓ decision-making process of any solicitation

## Situations that may require recusal

- under City Code
- under state law

## Required recusal under Code:

The City Code requires that a board member recuse himself/herself when

- the member has a “substantial interest” in a person or entity that would be “affected” by a vote of the board of which he/she is a member.

# “substantial interest”

may arise from

Ownership

Income

Control

Debt

Family

Doing business

**“affected”** means:

“reasonably likely to be subject to a **direct economic effect or consequence**, either positive or negative, as a result of the vote or decision in question.”

City Code defines “substantial interest” in **real property** as:

- owning an interest in real estate worth \$5,000 +

City Code defines “substantial interest” in a **business entity** as:

owning 5% + of voting stock, shares, or equity OR

owning \$5,000 + of the equity or market value of an entity  
OR

receiving funds during the previous twelve months or previous calendar year equaling or exceeding \$5,000 in salary, bonuses, or professional fees; or \$20,000 in payment for goods, products, nonprofessional services; or 10% of the member’s gross income during that period, whichever is less.

Recusal rules sometimes apply differently to different types of city boards.

# Types of City Boards

Permanent citizen boards are variously called boards, commissions, committees, councils, etc., but all such terms are synonymous.

Some boards have responsibilities that are purely advisory, and so they report and recommend to council. These are called “[advisory boards](#).”

Some boards may exercise some independent authority without going to council for a final vote, although their actions are still ultimately appealable to council. These are called “[sovereign boards](#).” [The Austin Area HIV Planning Council is a sovereign board.](#)

# Rules that apply to ALL boards:

- Members of *all* city boards are subject to the City's ordinances regarding conflicts of interest.
- Actions of *all* city boards that involve the use of federal funds have additional conflict of interest requirements under federal law.

## ADDITIONAL laws that apply to sovereign boards:

The **state conflict of interest statutes** apply to members of sovereign boards. These are Local Government Code Chapter 171 (interest in real property / business entity) and Chapter 176 (contract conflict disclosures).

- Members of advisory boards are not subject to the state conflict of interest statutes.
- This can sometimes lead to confusion when members of advisory boards hear about requirements of the state statutes.

# TO REPEAT

## Required recusal under Code:

The **City Code** requires that a board member recuse himself/herself when

- the member has a “**substantial interest**” in a person or entity that would be “**affected**” by a vote of the board of which he/she is a member.

# Remember...

- The vote or decision need not be the only producing cause of the economic effect or consequence. It is enough that the effect or consequence would be reasonably expected to occur.
- The vote or decision need not be the only decision or the final decision on the matter.

# What else requires recusal under Code?

A city board member  
who serves as

a corporate officer or member of the board  
of directors of a non-profit entity

may not participate in a vote or  
decision regarding funding by or  
through the City for the entity.

# What else requires recusal under Code?

A city board member who is a creditor, debtor, or guarantor of another person / entity

in an amount of \$5,000 + (except for a mortgage loan on homestead, or lease of a personal vehicle entered into before the previous 12 months)

has a recusable substantial interest

## Required recusal under state law:

State law (LGC 171) requires that a board member file an affidavit before a vote, and may also have to abstain from further participation, if:

the member has a “substantial interest” in a business entity or in real property.

LGC 171 defines “substantial interest” in **real property** as:

- owning an interest in real estate with an FMV of \$2,500 +

LGC 171 defines “substantial interest” in a **business entity** as:

owning 10% + of voting stock, or shares OR

owning either 10% + or \$15,000 + of the FMV of an entity  
OR

receiving funds from the entity exceeding 10% of the member’s gross income for the previous year.

So, if there is a substantial interest in real property or a business entity that requires [filing a 171 affidavit](#), the form must be filed with the city clerk before any vote or decision ... [and](#)

... the member must [abstain](#) from participation/voting if action “will have a special economic effect” on the business entity or value of the real property “distinguishable from its effect on the public.”

## Required filing (not recusal) under state law:

State law (LGC 176) requires that a board member file a “conflicts disclosure statement” if the member or his/her family has an employment or business relationship with a person ...

and that person is either entering into a contract with the City, or the City is considering entering into a contract with them.

## Required filing under state law:

LGC 176: Must file **conflicts disclosure form** if employment or business relationship results in member or his/her family receiving income (other than investment income) of more than \$2,500 during the previous 12 months.

Must file if member or his/her family has received gift(s) from the contracting person with aggregate value of \$250 + during the previous 12 months.

Must file with City's records administrator "not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing."

# Recusal PROCESS

# RECUSAL STEPS

## other than for LGC 171

**STEP 1:** Indicate on the attendance sheet that a conflict exists with a particular item.

**STEP 2:** State from the dais that you are recusing and why, as your statement must be included in the meeting's official minutes.

**STEP 3:** Take no part in any discussion or vote, whether on or off the dais.

**NOTE:** You do not have to leave the dais during the discussion or vote, but you may do so.

Remember you may not appear before your own board as an advocate for yourself or any other person.

# RECUSAL STEPS

## for LGC 171

**STEP 1:** Indicate on the attendance sheet that a conflict exists with a particular item for which a 171 affidavit has been filed.

**STEP 2:** If you must also abstain, state from the dais that you are abstaining and why, as your statement must be included in the meeting's official minutes.

**STEP 3:** Take no part in any discussion or vote, whether on or off the dais.

**NOTE:** You do not have to leave the dais during the vote or discussion, but you may do so.

Remember you may not appear before your own board as an advocate for yourself or any other person.

# Federally- funded PROJECTS

If a city board reviews a federally-funded project or activity, the members are *also* subject to the

## **federal conflict rules**

for the federal program that is the source of the funding.

Each federal program has **specific conflict of interest rules**. The requirements that are set by various federal agencies may vary.

Typically, an official or an official's relative or business associate may not have a financial interest in the federal activity.

The prohibition applies during the official's tenure and for **a year thereafter**.

**Remember... recusal  
is an option even if it  
is not required.**

- Some conflicts are not recognized by the law, and require common sense
- Don't over-legalize
- Be sensitive to public perception

# GIFT POLICY

Gifts and favors can create a conflict:

Gifts create a problem because of the power imbalance (or perceived imbalance) between the government and the governed.

The City regulates - people fear that regulatory power

The City provides necessary services - people may be concerned about whether they will get needed services

The City is a major player in the local economy - many businesses are dependent on city contracts

# What is the City's gift policy?

You may NOT:

Accept or solicit any gift or favor that *might reasonably tend to influence* you in the performance of your official duties,

Accept or solicit any gift or favor that you know or should know has been *offered with the intent to influence* your official conduct,

Accept or solicit any gift or favor that you know or should know has been offered *with the intent to reward* your official conduct.

# Questions

# City of Austin Ethics & Compliance Team (Law Department)

**Sabine Romero  
(attorney)**

**512-974-2518**

**Cynthia Tom (attorney)  
512-974-3042**

**LaVonia Horne-Williams  
(paralegal)**

**512-974-2625**

**Jerikay Gayle (attorney)  
512-974-6485**

**Alicia Olmstead  
(paralegal)**

**512-974-2201**

**An Duong-Schultze  
(admin)**

**512-974-2884**